

**STATE OF ILLINOIS**  
**ILLINOIS CENTURY NETWORK**

***CONTRACT***

This contract made and entered by and between the ILLINOIS CENTURY NETWORK, by its fiscal agent, Illinois Board of Higher Education, (hereinafter called "ICN") and *SBC DataComm, Inc.* (hereinafter called "SBC") collectively referred to as the "Parties".

WHEREAS, the ICN is a high speed telecommunications network that provides reliable communication links to and among Illinois schools, institutions of higher education, libraries, museums, research institutions, State agencies, units of local government, and other local entities that provide service to Illinois citizens (hereinafter described as "constituents"); and

WHEREAS, on April 26, 2002 the ICN issued a Request for Proposal (RFP) seeking proposals for the purpose of establishing a contract for Cisco equipment and services which Request for Proposal is attached as Exhibit 1 and made a part of this contract; and

WHEREAS, SBC responded which Proposal is attached as Exhibit 2 and made a part of this contract; and

WHEREAS, the ICN requested additional clarification of the SBC proposal which the ICN clarification questions and the SBC responses are attached as Exhibit 3 and made a part of this contract;

NOW THEREFORE, in consideration of these premises and the mutual promises set forth herein, the parties hereby agree as follows:

1. **Services and Pricing:** ICN will purchase and SBC shall provide any Cisco equipment and related services at the rates described in Exhibit 2. In addition, SBC agrees to extend to ICN's constituents discounted pricing for all Cisco equipment and services at rates not to exceed those described within Exhibit 2. All order placed hereunder shall reference this contract number and shall be subject to the terms and conditions in this contract. Any terms and conditions in the Purchase Order which conflict with the terms and conditions of this contract shall be deemed superseded and deleted.
2. **Responsibility:** Both parties recognize and agree that the ICN is not responsible for orders placed by ICN constituents. By placing a purchase orders hereunder, the constituents agree to the obligations of ICN set forth herein, and all warranties and other agreements of SBC will extend to such constituents with respect to the equipment and services provide to each.
3. **Delivery and Installation:** SBC must provide "F.O.B. destination, freight prepaid and charged back" for all ICN and constituent ordered equipment. "F.O.B. destination, freight prepaid and charged back" is defined as seller pays the freight charges and adds to invoice, buyer bears freight charges, seller owns goods in transit, and seller files claims (if any). Therefore, SBC will

have door-to-door responsibility for delivery of operational equipment and will be responsible for any claims resulting from damaged or defective goods.

4. **Installation:** At the Premises, SBC will, when so requested by ICN, install Equipment in accordance with the Statement of Work agreed to by the parties, and referenced in an Order. SBC will maintain all work areas at the Premises in a neat and orderly condition.
5. **Items to be Furnished by ICN:** In connection with the installation of the Equipment at the Premises, ICN will furnish any conduit, holes, wireways, wiring, plans, equipment, space, temporary and permanent power and other utilities, and all other items and services reasonably required for the Equipment's installation/integration in accordance with the Statement of Work. SBC will rely on all information provided by ICN and will not be responsible or held liable for any damages or costs that result from errors or omissions in such information. ICN will provide a suitable and safe environment. SBC has not included in its charges any expense for dealing with or removing any potentially hazardous substances, such as asbestos. ICN is responsible for handling such materials, at its cost, and for any additional costs incurred by SBC. ICN also will obtain, at ICN's expense, any necessary licenses, permits and consents (including landlord's or mortgagee's consents) in connection with the installation. Notwithstanding any other part of this contract: (a) SBC shall have the right to suspend performance or to pursue any other remedies provided for under this contract where ICN delays or fails to comply with this provision; and (b) where any of the measures described above are unreasonably expensive, ICN may request that SBC suspend its performance until such time as an alternative remedy or course of performance is secured or agreed upon; provided, however, that SBC may terminate this contract or an Order where any such suspension lasts longer than thirty (30) days.
6. **Cutover and Acceptance:** Cutover occurs when the Equipment has been delivered and installed (if installation is included) and is ready for ICN use. After cutover, ICN shall have ten (10) days to test the Equipment and deliver to us a signed certificate of acceptance or written notification of material defects. If ICN fails to deliver a certificate of acceptance or written notice of material defects within such time, the Equipment and Services shall be deemed accepted as of the tenth day.
7. **Storage of Equipment:** SBC and/or its designated subcontractors may store a reasonable amount of Equipment, materials, tools and other items necessary for the performance of an Order on the Premises or in such other secure location(s) as ICN may designate, at no charge. ICN will take reasonable precautions to protect and maintain the integrity of any such items and will accept delivery of any such items delivered to ICN's facilities when SBC personnel are not available to accept delivery and place or direct the placement of such items on the Premises or other secure location(s). In the event ICN accepts delivery of any items under this contract, ICN will promptly notify SBC of the delivery and location of the items delivered.
8. **Export of Equipment:** Export of Equipment is subject to the Export Control Laws of the United States. ICN agrees not to export the Equipment in violation of those laws.
9. **Term:** The term of this contract shall be from the effective date of this contract through twenty-four (24) months. The ICN shall have the option to renew the contract for up to three additional years if SBC is able to extend the same or better terms and conditions. At least 60 days prior to

expiration ICN will give SBC written notice of its intent to extend the term for an additional period. Within 30 days of receipt of ICN's notice, SBC will notify ICN in writing of any changes to prices which will be applicable during the extension period. In the event ICN and SBC are unable to agree, prior to the expiration date, on prices to be effective during the extension of the term, ICN's extension will be deemed withdrawn, and this contract shall terminate on the scheduled expiration date.

**10. Billing:**

- a) SBC shall submit invoices to the address, on the schedule and with the detail mutually agreed upon by the parties. Invoices for supplies ordered or services performed and expenses incurred prior to July 1st must be presented to the ICN no later than July 31; otherwise SBC may have to seek payment of such invoices through the Illinois Court of Claims (**30 ILCS 105/25**). Billings shall be made to conform to State fiscal year requirements, including prorating if necessary, notwithstanding any contrary provision in this contract or order.
- b) SBC shall not bill for any taxes unless a statement is attached to the bill identifying the tax and showing why it is legally chargeable to the ICN. The ICN does not warrant the interest component of any payment, including installment payments, are exempt from income tax liability.
- c) By submitting an invoice SBC certifies the supplies and services met all requirements of the contract, and the amount billed and expenses incurred are as allowed in the contract.

**11. Payment:**

- a) Late payment charges, if any, shall not exceed the formula established in the State "Prompt Payment" Act (**30 ILCS 540/1**) and rules (**74 Ill. Adm. Code 900**). Payments delayed at the beginning of the State's fiscal year (July and August payments) because of the appropriation process shall not be considered a breach.
- b) The ICN shall not be liable to pay for any supplies or services, including related expenses subject of this contract incurred prior to the beginning of the term of this contract. Any contract or order labeled "subject to financing" or words to similar effect is subject to the ICN obtaining suitable financing.
- c) The approved invoice amount will be paid less any retainage and previous partial payments. Final payment shall be made upon determination by the ICN that all requirements under this contract have been completed, which determination shall not be unreasonably withheld. Such final payment will be made subject to adjustment after completion of an audit of vendor's records as provided for in this contract.
- d) Any contract or order requiring payment of financing interest is subject to the interest rate limitation set by law of the greater of 9% or 125% of the G.O. Bond Index (**30 ILCS 305/1**).
- e) As a condition of payment, SBC must pay its employees prevailing wages when required by law (e.g., public works, printing, janitorial, window washing, security guard and food service), and must pay its suppliers and subcontractors providing lien waivers on request.

12. **Availability of Appropriations (30 ILCS 500/20-60):** ICN shall use its best efforts to secure sufficient appropriations to fund this contract, including making a request for such payments in each budget and exhausting all available review and appeals in the event such portion of the budget is not approved. However, the ICN's obligations hereunder shall cease immediately, without penalty or further payment being required, if the Illinois General Assembly or federal funding source fails to make an appropriation sufficient to pay such obligation. The ICN shall reasonably determine whether amounts appropriated are sufficient. ICN shall give SBC notice of insufficient funding as soon as practicable. SBC's obligation to perform shall cease upon receipt of the notice.
13. **Performance Reviews:** The ICN may conduct a post performance review of SBC's performance under the contract. Any professional and artistic services performed under this contract shall be subject to a post performance review. SBC shall cooperate with the ICN in this review, which may require that SBC provide records of its performance and billing. SBC shall provide any required information within 30 days of the ICN's request. This post performance review may be used by any State agency or ICN constituent in determining whether to enter into other contractual relationships with SBC.
14. **Audit/Retention Of Records (30 ILCS 500/20-65):** SBC and its subcontractors shall maintain books and records related to performance of this contract or subcontract and necessary to support amounts charged to the ICN in accordance with applicable law, terms and conditions of this contract, and generally accepted accounting practice. SBC shall maintain these books and records for a minimum of three (3) years after the completion of the contract, final payment, or completion of any contract audit or litigation, whichever is later. All books and records shall be available for review or audit by the ICN, its representatives, the Illinois Auditor General, and other governmental entities with monitoring authority upon reasonable notice and during normal business hours. SBC agrees to cooperate fully with any such review or audit. If any audit indicates overpayment to SBC, or subcontractor, the ICN shall adjust future or final payments otherwise due. If no payments are due and owing to SBC, or if the overpayment exceeds the amount otherwise due, SBC shall immediately refund all amounts which may be due to the ICN. Failure to maintain the books and records required by this Section shall establish a presumption in favor of the ICN for the recovery of any funds paid by the ICN under the contract for which adequate books and records are not available to support the purported disbursement.
15. **Schedule of Work:** Any work performed on ICN premises shall be done during the hours designated by the ICN and shall in any event be performed so as to minimize inconvenience to the ICN and its personnel and minimize interference with the ICN's operations.
16. **Independent Contractor:** SBC is an independent contractor. Supplies provided and/or services performed pursuant to this contract are not rendered as an employee of the ICN or of the State of Illinois. Amounts paid pursuant to this contract do not constitute compensation paid to an employee.

**17. Responsibility for Agents and Employees:** SBC shall be responsible for the negligent acts and omissions of its agents, employees and subcontractors in their performance of SBC'S duties under this contract. SBC represents that it shall utilize the services of individuals skilled in the profession for which they will be used in performing services hereunder. In the event that the ICN reasonably determines that any individual performing services for SBC hereunder is not providing such skilled services, it shall promptly so notify SBC in writing specifying the cause of such rejection and SBC shall replace that individual.

**18. Assignment And Subcontracting:**

- a) SBC may not assign, or transfer any interest in the work subject of this contract without ICN'S prior written consent which shall not be unreasonably withheld or delayed, provided that SBC may assign this contract to an affiliate upon written notice. In the event the ICN consents, the terms and conditions of this contract shall apply to and bind the party to whom such work is assigned or transferred as fully and completely as SBC is hereby bound and obligated. This includes requiring such parties to submit certifications and disclosures to ICN for review and approval upon request.
- b) After notice, ICN may transfer the contract or payment responsibility to another State agency, or assign the contract to a third-party for financing purposes.
- c) ICN acknowledges that Cisco is providing SmartNet Maintenance Services and that SBC is not liable for Cisco's performance. For any other work provided hereunder other than by Cisco, SBC may subcontract any or all of the work to be performed by it under this Contract, but shall retain full responsibility for the work to be subcontracted. SBC shall notify the ICN in writing of any subcontracts used to perform work hereunder. No subcontract may be used by SBC hereunder if ICN objects in writing within five (5) business days of receipt of notice.

**19. License:** SBC, directly or through its employees, shall have and maintain any required license. With consent of the ICN, SBC may meet the license requirement through a subcontractor.

**20. Maintenance Assurance:** To the extent that the ICN wishes to purchase equipment or other parts that Cisco normally sells through SBC under its Distributorship Agreement, then SBC will sell to ICN such equipment and parts.

**21. Confidentiality And Use Of Work Product:**

- a) Any documents or information obtained by SBC from the ICN in connection with this contract shall be kept confidential and shall not be provided to any third party unless disclosure is approved in writing by the ICN.
- b) The proprietary information restrictions will not apply to information which (a) is already known to the receiving party, (b) is or becomes publicly known through no wrongful act of the receiving party, (c) is independently developed by the receiving party without benefit of the disclosing party's proprietary information, (d) is received from a third party without similar restriction and without breach of this contract, or (e) is disclosed by disclosing party to a third party without an obligation of confidentiality.

- c) The ideas, concepts, methodologies, processes, inventions and tools (including computer hardware and software where applicable) that SBC previously developed and brings to the ICN in furtherance of performance of the contract shall remain the property of SBC. SBC grants to the ICN a nonexclusive license to use and employ such software, ideas, concepts, methodologies, processes, inventions and tools solely within its enterprise.

**22. Warranty:**

- a) SBC warrants that all services will be performed in a good and professional manner. Unless otherwise agreed, SBC warrants that supplies shall be new, unused, of most current manufacture and not discontinued, shall be free of defects in materials and workmanship, shall be provided in accordance with manufacturer's standard warranty and shall perform in accordance with manufacturer's published specifications. SBC warrants it has title to, or the right to allow the ICN to use, the supplies and services being provided and that the ICN may use same without suit, trouble or hindrance from SBC or third parties.
- d) SBC, for itself and its subcontractors and agents, represents and warrants that: (i) all products delivered and services performed under this contract (the "Products") are "Year 2000 Compliant," and will and are designed to accurately receive, retrieve, process, provide and output date/time data from, in and between the twentieth and twenty-first centuries, and from, in and between the years 1999 and 2000. In the event of a breach of this Year 2000 warranty, VENDOR shall, at its sole expense and without interrupting ongoing business of the ICN, immediately take all necessary actions to cure the breach.
- e) SBC warrants it has good title to the Equipment, free of any claims, liens, encumbrances or security interest of any other part, that the Equipment conforms to the manufacturer's published specifications, and is free from electrical or mechanical defects in materials and workmanship under normal installation, use and service. In addition, for THIRTY (30) days after delivery (or installation, if installation was included). SBC will promptly repair or replace (at its option and expense) any failure of the Equipment to conform to or perform according to the manufacturer's specifications or any electrical or mechanical defects in materials or workmanship with (at SBC's option) new or used replacement parts. SBC will pass all manufacturers' warranties to the ICN after delivery (or installation, if included). If SBC is unable to repair the Equipment to conform to the warranty after a reasonable number of attempts, SBC will (at its option) either provide ICN with replacement Equipment or fully refund the ICN's payments. For major malfunctions, SBC will use its best efforts to have a technician working on the Equipment within: (a) Four (4) hours, after receiving ICN's notice and SBC will complete repairs as soon as practicable; (b) for other malfunctions, SBC will use its best efforts to respond within twenty-four (24) hours during its regular business hours 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays and weekends. These are the ICN's exclusive remedies for breach of warranty.
- f) THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF, AND SBC DISCLAIMS, ALL OTHER EXPRESS OR IMPLIED WARRANTIES, OBLIGATIONS OR LIABILITIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR

PARTICULAR PURPOSE. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH HEREIN, THE EQUIPMENT (INCLUDING SOFTWARE) IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. SBC DOES NOT WARRANT THAT THE EQUIPMENT (INCLUDING SOFTWARE AND SECURITY SOFTWARE) WILL BE UNINTERRUPTED OR ERROR FREE IN ITS OPERATION OR PREVENT THIRD PARTY HACKING OR ACCESS TO ICN'S NETWORKS.

- g) ICN'S SOLE AND EXCLUSIVE REMEDIES AGAINST SB, ITS AFFILIATES, AND THEIR DIRECTORS, OFFICERS AND EMPLOYEES FOR ANY LOSSES, COSTS OR DAMAGES CAUSED BY OR ARISING FROM ANY EQUIPMENT, SOFTWARE OR SERVICE PROVIDED BY SBC IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT OR IN TORT, SHALL BE ICN'S RIGHT TO RECEIVE REPAIR OR REPLACEMENT OF THE EQUIPMENT OR THE SERVICES. IN ANY EVENT, SBC'S LIABILITY TO THE ICN SHALL BE LIMITED TO THE MONEY PAID TO SBC BY THE ICN UNDER THE APPLICABLE STATEMENT OF WORK. SBC, ITS AFFILIATES, DIRECTORS, OFFICERS AND EMPLOYEES SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS AND LOSS OF DATA) SUSTAINED OR INCURRED IN CONNECTION WITH THE PERFORMANCE OR NONPERFORMANCE OF WORK UNDER THIS CONTRACT OR THE USE OR OPERATION OF THE EQUIPMENT, SOFTWARE AND SERVICES PROVIDED OR SOLD OR LICENSED UNDER THIS CONTRACT, OR FOR ANY DAMAGES DUE TO CAUSES BEYOND THE REASONABLE CONTROL OF SBC OR ATTRIBUTABLE TO ANY SERVICE, PRODUCTS, OR ACTIONS OF ANY PERSON OTHER THAN SBC, ITS AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS REGARDLESS OF THE FORM OF ACTION.
- h) The ICN will be subrogated to any claims or rights SBC may have against the manufacturer of the Equipment for breach of any manufacturer warranties or representations and, upon ICN's written request, SBC will take all reasonable actions to enforce on ICN's behalf any such express or implied warranties or representations applicable to the Equipment.

**23. Liability And Insurance:**

- a) SBC shall also indemnify the ICN against any claim or suit by a third party for direct damages or relief on account of injury to or death of any person or damage to tangible personal or real property caused solely by SBC's negligence or willful misconduct in the course of SBC's performance under this contract. SBC shall assume risk of loss until delivery to the agency's facility. SBC shall do nothing to prejudice the ICN's right to recover against third parties for any loss, destruction, or damage to ICN property, and shall at the ICN's request and expense, furnish to the ICN reasonable assistance and cooperation, including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the State in obtaining recovery.
- b) SBC shall maintain public liability, casualty and auto insurance in sufficient amount to protect the ICN from liability for acts of SBC and risks and indemnities assumed by SBC. If

SBC does not have minimum coverage for bodily injury of \$250,000 per person/\$500,000 per occurrence, and for property damage, \$100,000 per occurrence, SBC must inform the ICN and seek written permission for lesser coverage. SBC shall carry Worker's Compensation Insurance in amount required by law. Upon request, SBC shall provide and maintain any bond required by law or the ICN. SBC shall provide copies of certificates of insurance evidencing the coverage described in this paragraph.

- c) SBC shall indemnify the ICN against any claim or threat of claim brought by any third party alleging the Equipment infringes such party's patents, trademarks or copyrights ("the Intellectual Property"), providing that ICN: (i) shall have followed SBC's reasonable instructions for use of the Intellectual Property associated with the Equipment; (ii) shall not have modified the Equipment; (iii) notify SBC promptly and in writing of any such claims; and (iv) cooperate with and permit SBC to control the defense, settlement or other handling of such claim or threatened claim. In the event the Equipment shall be found not to conform to the Intellectual Property warranty, ICN's sole remedy against SBC shall be, at its option, to (i) defend ICN against such infringement claim; (ii) to substitute other functionally equivalent products for the infringing units or modify the infringing units so that they no longer infringe; or (iii) to accept return of the infringing units, providing ICN with credit for the remaining value of any returned units, which amount shall be calculated on a useful life not less than 5 years, except for software. THIS PARAGRAPH STATES THE ENTIRE LIABILITY OF SBC WITH RESPECT TO THE INFRINGEMENT OF PATENTS, COPYRIGHTS AND TRADEMARKS BY THE EQUIPMENT PROVIDED UNDER THIS CONTRACT.
  - d) The ICN assumes no liability for actions of SBC and is unable to indemnify or hold SBC harmless for claims based on this contract or use of SBC provided supplies or services. Unless provided by law, SBC is not eligible for indemnity under the State Employee Indemnification Act (5 ILCS 350/1 et seq.). Any liability for damages that the ICN might have is expressly limited by and subject to the provisions of the Illinois Court of Claims Act (705 ILCS 505/1) and to the availability of suitable appropriations.
  - e) Neither party shall be liable for incidental, special or consequential damages.
24. **Tax Compliance:** SBC shall be in compliance with applicable tax requirements and shall be current in payment of such taxes.
25. **Solicitation and Employment:** SBC shall not employ any person employed by the ICN at any time during the term of this contract to perform any work required by the terms of this contract. SBC shall notify the ICN's director if SBC solicits or intends to solicit for hire any of the ICN's employees during the term of the contract. During the term of this contract, neither party will hire the employees of the other with whom it has had contact in connection with performance hereunder, unless the other party provides its prior written consent to employment of the individual. This notice is not required if the solicitation is made generally, such as through a newspaper advertisement, and does not target the ICN's employees.
26. **Background Check:** The ICN may conduct background check of SBC's employees or SBC's subcontractors' employees that are assigned full time or routinely scheduled to perform services provided under this contract on the ICN's premises. The ICN shall comply fully with all laws relating to making investigative reports and disclosure of information therein. Background check means criminal and driver's license history. If the ICN reasonably determines that an



employee or subcontractor is unsuitable pursuant to this paragraph, the ICN shall notify SBC in writing of the reason for such disapproval.

27. **Legal Ability to Contract:** SBC certifies it is under no legal prohibition on contracting with the State of Illinois, has no known conflicts of interest and further specifically certifies that:
- a) SBC, its employees and subcontractors will comply with applicable provisions of the U.S. Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and applicable rules in performance under this CONTRACT.
  - b) SBC is not in default on an educational loan (**5 ILCS 385/3**).
  - c) SBC has informed the director of the ICN in writing if SBC was formerly employed by the ICN and has received an early retirement incentive under Section 14-108.3 or 16-133.3 of the Illinois Pension Code (**30 ILCS 105/15a**).
  - d) SBC has not been convicted of bribing or attempting to bribe an officer or employee of the State of Illinois or any other State, nor has made an admission on the record of having so bribed or attempted to bribe (**30 ILCS 500/50-5**).
  - e) If SBC has been convicted of a felony, at least five years have passed after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutor's office for the facts upon which the conviction was based continues to have any involvement with the business (**30 ILCS 500/50-10**).
  - f) SBC is not delinquent in the payment of any debt to the State (or if delinquent has entered into a deferred payment plan to pay the debt), and SBC acknowledges the contracting state agency may declare the contract void if this certification is false (**30 ILCS 500/50-11, effective July 1, 2002**).
  - g) SBC has not paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor has SBC accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract (**30 ILCS 500/50-25**).
  - h) SBC is not in violation of the "Revolving Door" section of the Illinois Procurement Code (**30 ILCS 500/50-30**).
  - i) SBC will report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anticompetitive practice among any bidders, offerors, contractors, proposers or employees of the State (**30 ILCS 500/50-40, /50-45, /50-50**).
  - j) SBC will, pursuant to the Drug Free Workplace Act, provide a drug free workplace, and if an individual shall not engage in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance in the performance of the contract. This certification applies to contracts of \$5000 or more with: individuals; and to entities with twenty-five (25) or more employees (**30 ILCS 580**).
  - k) Neither SBC nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the U.S. Department of Commerce. This certification applies to contracts that exceed \$10,000 (**30 ILCS 582**).
  - l) SBC has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any State or of the United States (**720 ILCS 5/33E-3, 5/33E-4**).

- m) SBC complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, including equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies (775 ILCS 5/2-105).
- n) SBC does not pay dues to, or reimburse or subsidize payments by its employees for, any dues or fees to any "discriminatory club" (775 ILCS 25/2).

28. **Conflicts of Interest:** SBC has disclosed, and agrees it is under a continuing obligation to disclose to the ICN, financial or other interests (public or private, direct or indirect) that may be a potential conflict of interest or which would prohibit SBC from having or continuing the contract. This includes, but is not limited to conflicts under the "Infrastructure Task Force fee prohibition" section of the State Finance Act (30 ILCS 105/8.40), Article 50 of the Illinois Procurement Code (30 ILCS 500/50), or those which may conflict in any manner with the SBC's obligation under this contract. SBC shall not employ any person with a conflict to perform under this contract. If any conflict under Section 50-13 exists, no contract may be issued without an exemption from the Governor pursuant to Section 50-20 of the Illinois Procurement Code. An exemption is necessary if:

- a) the person intending to contract with the State, their spouse or minor child:
  - 1. holds an elective office in Illinois;
  - 2. holds a seat in the Illinois General Assembly;
  - 3. is an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority; or
  - 4. holds an appointed position or is employed in any of the offices or agencies of the State government and who receives compensation for such employment in excess of 60% of the salary of the Governor (currently \$90,420.00). (The conflict of interest threshold of 60% of the Governor's salary set forth in Section 50-13 does not apply to elective office holders, legislators, and officers or employees of the Capital Development Board or the Illinois Toll Highway Authority.)
- b) the contract is with a firm, partnership, association or corporation in which a person covered by item (a) above receives more than 7½% of the total distributable income or an amount in excess of the salary of the Governor (currently \$150,700).
- c) the contract is with a firm, partnership, association or corporation in which a person covered by item (a), together with their spouse or minor child, receives more than 15% in the aggregate of the total distributable income or an amount in excess of 2 times the salary of the Governor (currently \$301,400) from the firm, partnership, association or corporation.

29. **Breach And Other For Cause Termination:** ICN may terminate this contract without penalty to the ICN or further payment required in the event of:

- a) material breach of this contract which, if it is susceptible of being cured, is not cured within 30 days of the ICN giving notice of breach to SBC, including but not limited to failure of SBC to maintain covenants, representations, warranties, certifications, bonds and insurance;
- b) commencement of a proceeding by or against SBC under the United States Bankruptcy Code or similar law; or any action by SBC to dissolve, merge, or liquidate; or

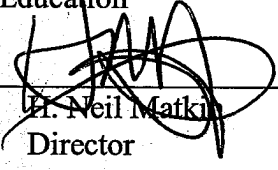
- c) material misrepresentation or falsification of any information provided by SBC in the course of any dealing between the parties or between SBC and any State agency.
30. **Force Majeure:** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, labor or material shortages, labor disputes, fire, flood, explosion, legislation, and governmental regulation.
31. **Non-Discrimination:** In compliance with the State and Federal Constitutions, the Illinois Human Rights Act, the U. S. Civil Rights Act, and Section 504 of the Federal Rehabilitation Act, the ICN does not unlawfully discriminate in employment, contracts, or any other activity.
32. **Applicable Law:** This contract shall be construed in accordance with the laws and rules, including the Standard Procurement Rules, of the State of Illinois. The Department of Human Rights' Equal Opportunity requirements are incorporated by reference. Any claim against the ICN arising out of this contract must be filed exclusively with the Illinois Court of Claims (705 ILCS 505/1). The State of Illinois does not waive sovereign immunity by entering into this contract. Any provision containing a citation to Illinois statutory requirements (cited ILCS) may not contain complete statutory language. The official text, which is incorporated by reference, can be found in the appropriate chapter and section of the Illinois Compiled Statutes. An unofficial version can be viewed at [www.legis.state.il.us](http://www.legis.state.il.us).
33. **Notices:** Notices shall be in writing and may be delivered by any means. Notices sent by fax must show the date/time of successful receipt at the fax number set forth on the signature page. Either party may at any time give notice in writing to the other party of a change of name, address, or fax number. Notices to SBC shall be sent to the person shown on the signature page. Notices to ICN shall be sent to the executive head of the ICN at the ICN headquarters.
34. **Entire Contract:** This contract, including any attachments, constitutes the entire contract between the parties. Modifications and waivers must be in writing and signed or approved by authorized representatives of the parties to be binding. If any term or condition of this contract is declared void, unenforceable, or against public policy, that term or condition shall be ignored and shall not affect the remaining terms and conditions of this contract, and the contract shall be interpreted as far as possible to give effect to the parties' intent.
- The RFP shall be controlling except to the extent it is otherwise specifically modified by SBC's Proposal. In the event of a conflict, inconsistency, or ambiguity between this contract and the RFP or SBC's Proposal, this contract shall prevail. In the event of a conflict, inconsistency, or ambiguity between the RFP and SBC's Proposal, SBC's Proposal shall prevail.
35. **References to ICN:** Any reference to ICN in this contract with respect to rights, warranties, indemnifications, pricing, maintenance, contract conditions, conflicts of interest, confidentiality, liability, and the like, is understood to be for the benefit not only of the ICN, but its constituents, and the Board of Higher Education,.

Effective Date: Sept. 26, 2002

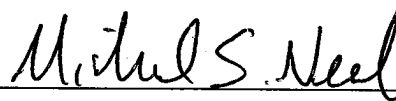
ILLINOIS CENTURY NETWORK  
By its fiscal agent Illinois Board of  
Higher Education

SBC DataComm, Inc.

By: \_\_\_\_\_

  
H. Neil Matkin  
Director

By: \_\_\_\_\_



Printed Name: \_\_\_\_\_

Michael Noel

Title: \_\_\_\_\_

Sales Manager